

## **ADMINISTRATIVE**

### **By-law A-5**

*A by-law to provide for the*

## **INDEMNIFICATION AND DEFENCE OF MEMBERS OF COUNCIL AGAINST LIABILITY INCURRED WHILE ACTING ON BEHALF OF THE MUNICIPALITY**

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## 1.1 COUNCIL MEMBER INDEMNIFICATION BY-LAW

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*WHEREAS by section 252 of the Municipal Act, R.S.O. 1990, c. M.45, as amended, the councils of all municipalities may pass by-laws for, among other things, paying any damages or costs awarded against any members of the council or expenses incurred by them as a result of any action or other proceeding arising out of acts or omissions done or made by them in their capacity as members or officers of the municipality including while acting in the performance of any statutory duty imposed by any general or special Act or for paying any sum required in connection with the settlement of such an action or other proceeding and for assuming the cost of defending any such member in such an action or other proceeding.*

*THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:*

### SHORT TITLE COUNCIL MEMBER INDEMNIFICATION BY-LAW

#### Part 1 DEFINITIONS

##### 1.1 Definitions

In this by-law:

##### **Action or proceeding - defined**

“action or proceeding” shall mean an action or proceeding referred to in section 3.1 of this by-law, but does not include an action or proceeding referred to in Part 2 of this by-law.

##### **Corporation - defined**

“Corporation” shall mean The Corporation of the City of London.

##### **Member - member of the Council - defined**

“member” and “member of the Council” includes a person who was a member of the Council at the time the action or other proceeding arose but who prior to judgment, settlement or other final disposition of the action or proceeding has ceased to be a member of the Council.

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**Part 2**

**EXCLUDED ACTIONS - PROCEEDINGS**

**2.1 Acts - omissions - before December 15, 1978**

This by-law does not apply to an action or proceeding arising out of an act or omission done or made before December 15, 1978.

**2.2 Contravention - Municipal Conflict of Interest Act**

This by-law does not apply to an action or proceeding under the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, as amended, if the member has been found to have contravened section 5 of the Act, other than through inadvertence or by reason of a *bona fide* error in judgment.

**2.3 Contravention - Municipal Elections Act**

This by-law does not apply to an action or proceeding under the *Municipal Elections Act* if the member has been found to have committed bribery or a corrupt practice or to have otherwise contravened any of the provisions of the Act.

**2.4 Contravention - Criminal Code**

This by-law does not apply to an action or proceeding under the *Criminal Code*, R.S.C. 1985, c. C-46 if the member has been found to have contravened sections 122, 123, 124 or 125 of the Code.

**2.5 Libel - slander**

This by-law does not apply to an action or proceeding for libel or slander if the defamation has been proven against the member and the member has been found to have used the occasion for some purpose other than that for which qualified privilege is accorded by law.

**Part 3**

**INDEMNIFICATION - COUNCIL MEMBERS**

**3.1 Indemnification - by Corporation - conditions**

The Corporation shall indemnify a member of the Council and his heirs and legal representatives in the manner and to the extent provided by section 3.2 of this by-law in respect of any civil, criminal or administrative action or proceeding by a third party arising out of acts or omissions done or made by such person in his capacity as or by reason of being or having been a member of the Council or an officer of the Corporation, including acting in the performance of any statutory duty imposed by any general or special Act, if:

- (a) he acted honestly and in good faith with a view to the best interests of the Council or the Corporation; and

3.2 COUNCIL MEMBER INDEMNIFICATION BY-LAW 4.2

- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he had reasonable grounds for believing that his conduct was lawful.

**3.2 Indemnification - manner - extent**

The Corporation shall indemnify a person referred to in section 3.1 of this by-law by:

- (a) assuming the cost of defending such person in an action or proceeding;
- (b) paying any damages or costs, including a monetary penalty, awarded against such person as a result of an action or proceeding;
- (c) paying, either by direct payment or by reimbursement, any expenses reasonably incurred by such person as a result of an action or proceeding;
- (d) paying any sum required in connection with the proceeding;

to the extent that such costs, damages, expenses or sums are not assumed, paid or reimbursed under any provision of the Corporation's insurance for the benefit and protection of such person against any liability incurred by him.

**Part 4  
LEGAL REPRESENTATION**

**4.1 Lawyer - retention - by individual - Corporation**

Subject to section 4.2 of this by-law, where a person referred to in section 3.1 of this by-law is a party to or is otherwise involved in any action proceeding, he may either:

- (a) retain his own lawyer to represent him, in which case the provisions of Part 5 of this by-law apply; or
- (b) request the Corporation to select and retain a lawyer to represent him, in which case the provisions of Part 6 of this by-law apply.

**4.2 Lawyer - retention - by Corporation's insurers**

Notwithstanding any other provision of this by-law to the contrary, any lawyer retained by the Corporation's insurers from time to time to defend the Corporation in any action or proceeding shall represent a person referred to in section 3.1 of this by-law with respect to that action or proceeding unless the Corporation advises such person otherwise.

5.1 COUNCIL MEMBER INDEMNIFICATION BY-LAW 6.3

**Part 5**

**LAWYER - RETAINED BY INDIVIDUAL**

**5.1 Indemnification - conditional**

Where, under section 4.1 (a) of this by-law, a person referred to in section 3.1 of this by-law retains his own lawyer, he is entitled to indemnity from the Corporation under section 3.2 of this by-law only if he meets the requirements of sections 5.2 to 5.4 inclusive of this by-law.

**5.2 Information - filed - with Board of Control**

The member shall file with the Secretary of the Board of Control written particulars of the action or proceeding and notice of his intention to retain his own lawyer to represent him, together with the name and address of the lawyer.

**5.3 Successful - on merits - settlement - approved**

The member shall be substantially successful on the merits in his defence of the action or proceeding, or the Corporation has approved the settlement of the action or proceeding.

**5.4 Conditions - other - fulfilled**

The member shall fulfil the conditions set out in sections 3.1 and 7.1 of this by-law.

**Part 6**

**LAWYER - RETAINED BY CORPORATION**

**6.1 Request - in writing - to City Administrator**

Where, under section 4.1 of this by-law, a person referred to in section 3.1 of this by-law wants the Corporation to select and retain a lawyer to represent him, he shall submit such a request in writing to the City Administrator.

**6.2 Request - processed - notice of disposition**

The City Administrator shall submit the request to the Board of Control for recommendation to Council, and the City Clerk shall advise such person, in writing, of the disposition by the Council of the request.

**6.3 Notice - disposition - not received - 30 days - procedure**

If, after 30 days from submitting the request, such person has not been advised in writing of the disposition of his request, he may retain his choice of lawyer to act on his behalf until the Corporation retains another lawyer.

6.4 COUNCIL MEMBER INDEMNIFICATION BY-LAW 7.4

**6.4 Lawyer - replacement - by Corporation - procedure**

If the Corporation retains another lawyer to act on behalf of such person in place of the lawyer originally retained by him in accordance with section 6.3 of this by-law, the Corporation shall, subject to the *Solicitors Act*, pay to the person's lawyer all of his reasonable legal fees and disbursements in connection with his services rendered and work done in connection with action or proceeding from the time that such person retained the lawyer in accordance with section 6.3 of this by-law, until replaced by the lawyer retained by the Corporation.

**6.5 Settlements - approval - by City**

The City shall have the right to approve any settlement of any action or proceeding.

**Part 7**

**GENERAL PROVISIONS**

**7.1 Persons - served with process - responsibility**

Where a person referred to in section 3.1 of this by-law is served with any process issued out of or authorized by any court, administrative tribunal or other administrative, investigative, or quasi-judicial body, whether or not the person is named a party, in connection with any action or proceeding, he shall deliver the process or a copy thereof to the City Administrator and the City Solicitor.

**7.2 Duty - to cooperate**

A person referred to in section 3.1 of this by-law involved in any action or proceeding shall cooperate fully with the Corporation and any lawyer retained by the Corporation to defend such action or proceeding, shall make available to such lawyer all information and documents relevant to the matter as are within the knowledge, possession or control of such person and shall attend at all proceedings when requested to do so by such lawyer.

**7.3 Failure - to comply with by-law**

If a person referred to in section 3.1 of this by-law fails or refuses to comply with the provisions of this by-law, the Corporation shall not be liable to assume or pay any of the costs, damages, expenses, or sums mentioned in Parts 5 and 6 of this by-law.

**7.4 Executive acts - authorized**

The Mayor and the proper officers of the Corporation are hereby authorized and directed to do all the things necessary, including executing any necessary documents under the seal of the Corporation, to give effect to this by-law according to its true intent and meaning.

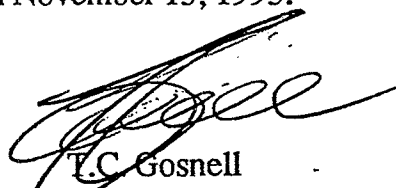
8.1 COUNCIL MEMBER INDEMNIFICATION BY-LAW 8.2

**Part 8**  
**REPEAL - ENACTMENT**

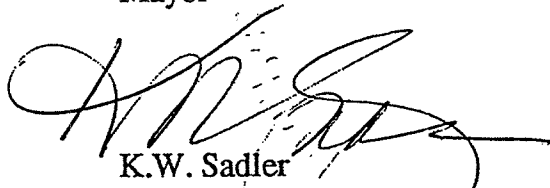
**8.1 By-law - previous**  
By-law A.-4930-287 is hereby repealed.

**8.2 Effective date**  
This by-law comes into force on November 15, 1993.

Passed in Open Council on November 15, 1993.



T.C. Gosnell  
Mayor



K.W. Sadler  
City Clerk

First Reading — November 15, 1993

Second Reading — November 15, 1993

Third Reading — November 15, 1993